



# Warren

City of Progress

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Mark A. Steenbergh, Mayor

George G. Constance  
City Attorney

October 10, 2003

Mr. Corbin Davis  
Clerk of the Supreme Court of Michigan  
P.O. Box 30052  
Lansing, MI 48909

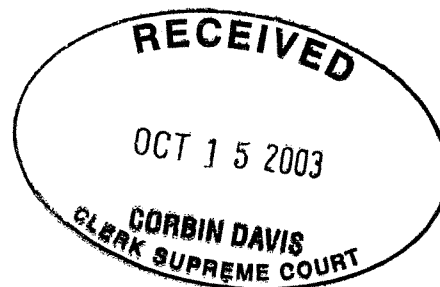
**Re: Order 2001-51, Proposed Amendment of Rule 404 of the Michigan Rules of Evidence**

Dear Mr. Corbin:

As City Attorney for the City of Warren, it is my duty to prosecute the crime of domestic assault within the boundaries of the City. Since implementing ordinance WCO Sec. 22-42 to combat this crime, my staff and I have met with many frustrations. More often than not, this is due to lack of evidence against the accused.

Being the third largest city in the State of Michigan the City of Warren is, unfortunately, no stranger to the problem of domestic violence. On April 14, 2003 the City responded to this unique crime by enacting an ordinance whereby domestic assault became a separate chargeable offense. The language in WCO Sec. 22-42 mirrors M.C.L. 750.81. This law was quickly enforced by both the City of Warren Police Department and City Attorney's Office as the first offense was charged on April 21, 2003. To date the City has charged over 150 defendants with the newly enacted law.

Despite our best efforts to prosecute these cases, we have found that many obstacles exist and unlike other crimes, it is very difficult to obtain a conviction. Court administrators, Assistant City Attorneys and Warren Police Officers have all offered similar explanations for why this is. There are simply too many evidentiary hurdles to consistently convict domestic violence defendants.



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As we are all too aware, domestic abuse is repetitive. The victims of this abuse become fearful of their abuser and even more fearful of the consequences of testifying against them. In the typical domestic assault case, the police are called to the scene after the crime has been committed. This, more often than not, leaves only two witnesses - the victim and the accused. To further complicate matters, being that this is a domestic situation, the victim and charged party are typically cohabiting or have deep rooted emotional ties to one another. Predictably, the victim will contact the Police or City Attorney's office in an effort to have charges dropped. Each case is pursued with great vigor, but with a witness who is reluctant, it is difficult to proceed. When the date set for trial arrives, either the victim fails to appear, claims responsibility for the attack or forgets the events. Needless to say, with no officer present during the attack and a complaining witness who refuses to cooperate, the case cannot be prosecuted.

The inability to obtain a conviction leaves the defendant with a clear record. When that party returns to court for future incidents, prosecutors are unable to get a clear picture of the defendant's past and the sequence repeats. In order to end this cycle of violence, prosecutors need more ammunition. Allowing the judge or jury to be able to consider evidence of prior acts of domestic violence evens the scales. No longer will abusers be able to explain their conduct in the charged incident as accidental or misunderstood. Prosecutors will be able to proceed without relying on a traumatized victim for their testimony. Instead, they may call upon those close to the situation who are aware of prior incidents. Being able to present this evidence gives prosecutors an invaluable tool to rely upon.

Domestic violence is an exceptional crime and exceptional measures must be taken to battle it. Prior acts of domestic violence are relevant evidence because of the repetitive nature of the crime. The dynamics of abuse necessitates change to the current evidentiary rules. Please accept this letter in support of the proposed amendment to Rule 404 of the Michigan Rules of Evidence as it relates to an offense involving domestic violence.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'G G Constance', written in a cursive style.

George G. Constance  
City Attorney